

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

I hereby certify that this NOTICE OF DISPOSITION OF CIVIL ACTION is being deposited with the United States Postal Service with sufficient postage as First-Class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on May 12, 2005.

Laura Murphy
Laura Murphy

TTAB

In re Serial No. 75-938,128

AMAZON.COM, INC.
1200 12th Avenue South, Suite 1200
Seattle, Washington 98144,

Opposer,

v.

VON ERIC LERNER KALAYDJIAN
4226 Scandia Way
Los Angeles, California 90065,

Applicant.

Opposition No. 91,122,000

05-17-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF DISPOSITION OF CIVIL ACTION

Pursuant to the Order of the Trademark Trial and Appeal Board dated April 12, 2005, Amazon.com, Inc. ("Amazon.com") hereby informs the Board of the disposition of the now-concluded civil litigation between the parties in the above-captioned matter.

On March 2, 2001, Opposer Amazon.com filed a lawsuit in the United States District Court for the Central District of California entitled *Amazon.com, Inc. v. Von Eric Lerner Kalaydjian d/b/a Amazon Cosmetics and Tan Products*, Case No. CV 01-02041 R (AIJx) (the "Action"). The complaint in the Action alleged claims for trademark infringement, unfair

competition, trademark dilution and violation of the Anticybersquatting Consumer Protection Act and the California Business and Professions Code. A true and correct copy of the complaint is attached hereto as Exhibit A. On March 28, 2001, the Applicant, Von Eric Learner Kalaydjian, filed an answer to the complaint, a true and correct copy of which is attached hereto as Exhibit B.

In January 2002, the parties entered into a confidential Settlement Agreement disposing of the Action. The Settlement Agreement did not resolve the dispute that is the subject matter of Opposition No. 91,122,000.

On April 19, 2002, the District Court for the Central District of California entered an order dismissing the Action. A true and correct copy of the order is attached hereto as Exhibit C.

Respectfully Submitted,

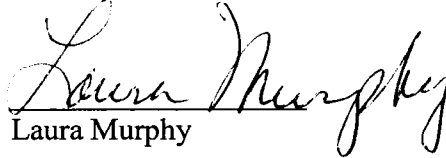
DATED: March 12, 2005



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CERTIFICATE OF SERVICE

I, Laura Murphy, hereby certify that I have mailed a true and correct copy of the foregoing NOTICE OF DISPOSITION OF CIVIL ACTION, with sufficient postage affixed, on this 12th day of March, 2005, to the Respondent herein at the address 4226 Scandia Way Los Angeles, California 90065-4329.


Laura Murphy

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
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Attorneys for Plaintiff
AMAZON.COM, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMAZON.COM, INC., a Delaware
corporation,

Plaintiff,

v.

VON ERIC LERNER KALAYDJIAN d/b/a
AMAZON COSMETICS AND TAN
PRODUCTS,

Defendant.

NO.

COMPLAINT FOR TRADEMARK
INFRINGEMENT; UNFAIR
COMPETITION; TRADEMARK
DILUTION; VIOLATION OF
ANTICYBERSQUATTING CONSUMER
PROTECTION ACT

DEMAND FOR JURY TRIAL

01-02041 R (AIX)

1. Amazon.com, Inc. ("Amazon.com") is the one of the best known Internet-based business in the world. Its distinctive AMAZON.COM[®] trademark instantly identifies to millions of consumers its highly successful goods and services. Defendant Von Eric Lerner Kalaydjian d/b/a Amazon Cosmetics and Tan Products ("Kalaydjian") has sought

1 improperly to profit from Amazon.com's substantial investment in its trademark and
2 reputation by operating the AmazonTan.com Web site from the address <amazontan.com>.
3 Defendant seeks to connect the Amazon Tan name and mark in the minds of consumers with
4 plaintiff's popular <amazon.com> Web site by incorporating the "amazon" and ".com"
5 elements of the famous AMAZON.COM[®] trademark into the AmazonTan.com Web site's
6 domain name and brand name, and by incorporating the "amazon" element of the
7 AMAZON.COM[®] mark into the Amazon Tan business name and other similar trade names,
8 including "Cosmeticsamazon" and "Amazon Exotic Royal Tanning Blend Oil." Thus,
9 defendant seeks simultaneously to trade off of the goodwill the Amazon.com name has come
10 to enjoy among consumers, and to reduce the value of that goodwill by improperly
11 associating Amazon.com's name with goods and services from unrelated sources. As a result
12 of defendant's actions, Amazon.com's hard-won reputation for premium quality is being
13 diluted, the value of its trademarks is being diminished, and consumers are being misled and
14 confused. This action seeks damages for the harm defendant has caused to date and
15 injunctive relief to prevent any further injury to Amazon.com.

16 I. JURISDICTION AND VENUE

17 2. This Court has jurisdiction over this action pursuant to: (i) 15 U.S.C. § 1121
18 and 28 U.S.C. §§ 1121, 1331 and 1338(b), as an action for violation of the Lanham Act, 15
19 U.S.C. §§ 1051, *et seq.*; the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127;
20 and the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); (ii) 28 U.S.C.
21 § 1332(a), as an action between citizens of different states in which the amount in
22 controversy exceeds \$75,000, exclusive of interest and costs; and (iii) 28 § U.S.C. 1367(a),
23 pursuant to the principles of supplemental jurisdiction.

24 3. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(b) in that,
25 among other things, the defendant resides in this district.

II. THE PARTIES

4. Amazon.com is a Delaware corporation with its principal place of business in Seattle, Washington.

5. Upon information and belief, plaintiff alleges that defendant Von Eric Lerner Kalaydjian is an individual and a resident and citizen of the State of California doing business as Amazon Cosmetics and Tan Products in Los Angeles County, California. Plaintiff is further informed and believes that Kalaydjian owns and operates the Internet Web site located at the Internet address <http://www.amazontan.com>.

6. Plaintiff is informed and believes that Kalaydjian has intentionally registered the Internet domain name <amazontan.com>, and that Kalaydjian operates the AmazonTan.com Web site from that address, in order to associate the AmazonTan.com Web site and the products offered thereon in the minds of consumers, including individuals residing in the Central District of California, with plaintiff's name and mark "Amazon.com."

III. FACTS GIVING RISE TO THIS ACTION

A. The Internet, Domain Names and Web Sites

7. The Internet is a worldwide network of computers through which businesses and individuals exchange information freely and, among other things, promote its products and services. Millions of computers are linked to the Internet. Access to the Internet generally is obtained over regular telephone lines, and the information on the Internet can flow across political and geographical boundaries. Any site on the Internet is accessible to users in the United States as well as others in the world with access to the Internet.

8. The Internet uses a common addressing scheme to find computers attached to the Internet. Every computer connected to the Internet has a unique identifying number. These numbers, which are known as Internet Protocol ("IP") numbers, are necessary for

1 computers to communicate with each other over the Internet. An example of an IP number
2 might be: 98.37.241.30.

3 9. , Because IP numbers can be cumbersome and difficult for Internet users to
4 remember or use, the IP number system has been overlaid with a more user-friendly system
5 of "domain names." A domain name is an alpha-numeric designation (*e.g.*, <go2net.com>)
6 correlated to an IP number (*e.g.*, 206.253.194.65), and serves as a unique "address" on the
7 Internet.

8 10. Domain names are comprised of at least two parts, which are called "domain
9 levels." Each domain level is separated by a period, which is referred to as a "dot." "Top
10 level" domains on the Internet are referred to by its Internet "zone" designations, such as
11 ".com," ".net," ".org," and ".gov." A substantial number of commercial entities use ".com"
12 and ".net" designations for its sites on the Internet.

13 11. "Second-level" domains, which are commonly referred to as "domain names,"
14 are those characters immediately to the left of the top level domain, such as "example" in the
15 domain name <example.com>. Domain names frequently consist of the name of the
16 individual or company that owns or maintains the computer, *e.g.*, <amazon.com> or
17 <microsoft.com>.

18 12. A number of private companies act as registrars of Internet domain names.
19 Once a registrar has issued a registration for a domain name, that exact domain name cannot
20 be registered to any other company or individual.

21 13. The Internet allows many forms of communication. On the World Wide Web
22 (the "Web"), which essentially is the graphical user interface of the Internet, information can
23 be presented on "pages" of graphics and text (referred to as a "webpage" or, if composed of
24 several webpages, a "Web site"). The Web is used for both commercial and non-commercial
25 communication. Commercial enterprises may use Web sites to display information about its
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1 goods or services. It is impossible for two distinct Web sites to have identical domain name
2 addresses. For example, only one Web site can exist at the domain name address
3 "acme.com."

4 14. A computer user who wishes to access information on a particular Web site on
5 the Internet must use that site's domain name to connect his or her computer with the desired
6 Web site. When the computer user correctly types in the desired domain name, he or she is
7 connected to the Web site associated with that domain name. Web sites commonly include a
8 "homepage" that welcomes the visitor with text, graphics and sometimes sound. The
9 homepage often has imbedded in its text or graphics "links" to other webpages containing
10 advertisements or offering goods or services for sale. When the user clicks on one of these
11 links, he or she is taken to another webpage (and thus to a new domain name address)
12 corresponding to the link.

13 **B. Amazon.com, Its Business and the Amazon.com Mark**

14 15. Amazon.com is the best known Internet-based company in America today.
15 Since 1995, Amazon.com has operated an Internet Web site located at the Internet address
16 <www.amazon.com> (the "Amazon.com Web site"). The Amazon.com Web site allows
17 computer users throughout the United States and the world to access information regarding
18 Amazon.com and the products and services it offers, and to purchase a variety of products,
19 ranging from books to toys, to home electronics, on-line.

20 16. In only five years, Amazon.com has grown from a two-person operation to the
21 world's largest on-line bookstore, offering more than 4.4 million titles. Amazon.com has
22 expanded its operations to include a broad range of products, including videos, home
23 electronics, tools, software, toys and games. Amazon.com's revenues in fiscal 1999
24 exceeded \$1.6 billion – an increase of more than 162% over the previous year and more than
25 100 times greater than those achieved in fiscal 1996. Amazon.com's achievements have
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1 generated tremendous attention in the media – thousands of articles have been written about
2 the company over the last few years – and growing, widespread awareness of Amazon.com
3 and its products among consumers.

4 17. The key to Amazon.com's phenomenal success is the company's ability to
5 meet and exceed its customers' expectations of excellent service, fast delivery, fair pricing,
6 and complete security for Internet transactions. Amazon.com has a reputation for excellence
7 and is widely recognized for its superior service.

8 18. From its inception, Amazon.com has used the name and mark
9 AMAZON.COM® and logos incorporating that term (collectively, "Amazon.com Marks") to
10 identify its goods and services. The Amazon.com Marks have been registered with the
11 United States Patent and Trademark Office as trade or service marks (including as U.S.
12 Registration Nos. 2,078,496, 2,167,345 and 2,078,494). Amazon.com has invested
13 substantially in advertising and promoting the Amazon.com Marks throughout the United
14 States and the world. As a result, the Amazon.com Marks have become widely known and
15 respected, and Amazon.com has developed an enormous amount of goodwill in them.

16 19. The positive correlation among Amazon.com, its products and the
17 Amazon.com Marks is derived in part from the substantial time, effort and financial
18 resources Amazon.com devotes to the operation of its Internet Web site. Consumers find the
19 Amazon.com Web site to be of high quality, in part from thorough training provided to its
20 employees, and in part from Amazon.com's substantial promotion of its products, services
21 and marks.

22 **C. Defendant's Willful Efforts to Misappropriate the Goodwill in the**
23 **Amazon.com Marks**

24 20. Amazon.com is informed and believes, and on that basis alleges, that
25 defendant engaged in a scheme to register a domain name and operate a Web site that
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1 incorporate the "amazon" and ".com" elements of Amazon.com's famous AMAZON.COM[®]
2 trademark and corresponding domain name, with the intent to create the impression among
3 consumers that defendant's business and products are affiliated with Amazon.com.
4 Specifically, plaintiff is informed and believes that defendant Kalaydjian has registered the
5 Internet domain name <amazontan.com> and is using that domain name as the addresses of
6 the AmazonTan.com Web site, which offers products competitive with those found on the
7 Amazon.com Web site.

8 **D. The Confusion and Injury Caused by Defendant's Activities**

9 21. As a result of the acts described above, defendant is misleading Internet users
10 who visit the AmazonTan.com site. Such users are likely to believe, among other things, that
11 the AmazonTan.com Web site is endorsed, sponsored or operated by, or is affiliated with,
12 Amazon.com.

13 22. Plaintiff is informed and believes and thereupon alleges that defendant
14 Kalaydjian registered the <amazontan.com> domain name, and is operating the
15 AmazonTan.com Web site, in order to trade off of and benefit from the high levels of
16 goodwill generated by the AMAZON.COM[®] trademark. Defendant's business does not have
17 a brand identity of its own that could possibly attract such high levels of customer goodwill
18 and name association. Thus, rather than develop goodwill in independently created
19 trademarks, defendant simply misappropriated Amazon.com's hard-won reputation for
20 quality and its popularity as an Internet destination.

21 23. Amazon.com is informed and believes and thereupon alleges that defendant is
22 receiving financial gain by reason of the unauthorized use of the <amazontan.com> domain
23 name, and the similar trade names "Amazon Cosmetics and Tan Products"
24 "AmazonTan.com," "Amazon Tan," "Cosmeticsamazon" and "Amazon Exotic Royal
25 Tanning Blend Oil"(collectively the "Amazon Tan names"). Moreover, defendant can at any
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1 time – absent an injunction – further profit from its infringing activities by using the Amazon
2 Tan names in other ways, such as linking to third-party Web sites, allowing advertising on
3 the AmazonTan.com Web site in exchange for commissions, “selling” the name, or pointing
4 Internet users who seek to reach the AmazonTan.com Web site to third-party Web sites in
5 exchange it for “click-through” revenues from such sites.

6 **Amazon.com’s Efforts to Stop Defendant’s Infringement of Its Rights**

7 24. When Amazon.com was made aware of defendant’s illegal use of the Amazon
8 Tan names, it sought to contact defendant and demanded termination of its operation of the
9 AmazonTan.com Web site. Despite such demand, defendant has refused to discontinue its
10 wrongful actions.

11 25. Defendant’s illegal activity continues unabated. Amazon.com has been left
12 with no choice but to institute the instant action seeking judicial protection of its rights.

13 **IV. FIRST CLAIM FOR RELIEF**

14 **Trademark Infringement, 15 U.S.C. § 1114(1)**

15 26. Amazon.com specifically realleges and incorporates herein by reference each
16 and every allegation contained in paragraphs 1 through 25 hereof.

17 27. The United States Patent and Trademark Office has granted a federal
18 trademark registration for each of the Amazon.com marks identified in this complaint. A list
19 of such registrations, as well as true and correct copies of the same, are attached hereto as
20 Exhibit “1.”

21 28. Amazon.com owns the exclusive trademark rights and privileges in and to the
22 Amazon.com marks. Amazon.com uses the Amazon.com marks as a designation of source
23 and quality for its goods and services. Amazon.com uses the registration symbol “®” on its
24 goods and in advertising associated with the Amazon.com marks.

1 29. Defendant's registration and use in interstate commerce of the Amazon Tan
2 names is likely to confuse, deceive and/or cause mistake among consumers and therefore
3 infringe plaintiff's rights in the Amazon.com Marks, in violation of 15 U.S.C.
4 Section 1114(1). Plaintiff is informed and believes and thereupon alleges that defendant
5 Kalaydjian has registered the <amazontan.com> domain name and has used the Amazon Tan
6 names with full knowledge of plaintiff's rights in the AMAZON.COM® mark.

7 30. Amazon.com has no adequate remedy at law for defendant's infringement of
8 the Amazon.com Marks, in that: (i) the Amazon.com Marks are unique and valuable
9 property, injury to which cannot adequately be compensated by monetary damages; (ii) the
10 damages to Amazon.com resulting from the infringement are not precisely and fully
11 ascertainable; (iii) the infringement injures and threatens to continue to injure Amazon.com's
12 reputation and goodwill; and (iv) the damage resulting to Amazon.com from defendant's
13 wrongful conduct, and the conduct itself, are continuing, and Amazon.com would be required
14 to bring a multiplicity of suits to achieve full redress for the injuries caused thereby.

15 31. Unless restrained, the foregoing wrongful acts of defendant will continue to
16 cause irreparable injury to Amazon.com, both during the pendency of this action and
17 thereafter. Therefore, this Court should enter orders preliminarily and permanently enjoining
18 defendant and his agents, employees and others acting in concert with them, from directly or
19 indirectly: (i) stating or implying that Amazon.com is in any way affiliated with defendant or
20 his Web site, or approves of or endorses defendant or his products, services or commercial
21 activities; (ii) using the Amazon.com Marks, or any other names, logo or marks that are
22 confusingly similar to the Amazon.com Marks, including without limitation the
23 <amazontan.com> domain name and the other Amazon Tan Names, or any other confusingly
24 similar names; (iii) using any word, term, name or device or any combination thereof that is
25 likely to cause confusion, mistake or deception as to the affiliation, connection or association
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1 with Amazon.com of defendant, defendant's goods, services or commercial activities, or the
2 goods, services or commercial activities of any third party; (iv) using any word, term, name,
3 device or any combination thereof that is likely to cause confusion, mistake or deception as to
4 the origin, sponsorship or approval by Amazon.com of defendant's goods, services or
5 commercial activities, or of the goods, services or commercial activities of any third party;
6 and (v) requiring defendant to take all steps necessary to direct the appropriate domain name
7 registrar to transfer to Amazon.com the <amazontan.com> domain name and any other
8 domain names that this Court determines infringe plaintiff's rights.

9 32. Amazon.com is further entitled to recover damages sustained in consequence
10 of defendant's wrongful conduct, in an amount to be determined; to recover defendant's
11 profits; and to recover its attorneys' fees and other costs herein. Based upon the
12 circumstances of the case, including the willful, deliberate and intentional nature of
13 defendant's conduct, as well as the extent of the unlawful conduct, Amazon.com is further
14 entitled, pursuant to 15 U.S.C. Section 1117, to recover triple the amount found as actual
15 damages.

16 V. SECOND CLAIM FOR RELIEF

17 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

18 33. Amazon.com specifically realleges and incorporates herein by reference each
19 and every allegation contained in paragraphs 1 through 32 hereof.

20 34. The acts of defendant alleged herein are in interstate commerce and are likely
21 to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
22 association with Amazon.com or its commercial activities of the goods, services or
23 commercial activities of defendant, or as to the sponsorship or approval by Amazon.com of
24 defendant's goods, services or commercial activities. Defendant's actions further
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1 misrepresent the nature, characteristics or qualities of defendant's goods, services or
2 commercial activities.

3 35. Amazon.com has no adequate remedy at law for the foregoing wrongful
4 conduct of defendant, in that: (i) defendant's actions damage and threaten to continue to
5 damage Amazon.com's unique and valuable property, injury to which cannot adequately be
6 compensated by monetary damages; (ii) the damages to Amazon.com from defendant's
7 wrongful actions are not precisely and fully ascertainable; (iii) the wrongful acts of defendant
8 injure and threaten to continue to injure Amazon.com's reputation and goodwill; and (iv) the
9 damages resulting to Amazon.com from defendant's wrongful conduct, and the conduct
10 itself, are continuing, and Amazon.com would be required to bring a multiplicity of suits to
11 achieve full compensation for the injuries caused thereby.

12 36. Unless restrained, the foregoing wrongful acts of defendant will continue to
13 cause irreparable injury to Amazon.com, both during the pendency of this action and
14 thereafter. Therefore, this Court should enter orders preliminarily and permanently enjoining
15 defendant and his agents, employees and others acting in concert with them from directly or
16 indirectly: (i) stating or implying that Amazon.com is in any way affiliated with defendant or
17 his Web site, or approves or endorses defendant or his products, services or commercial
18 activities; (ii) using the Amazon.com Marks, or any other names, logo or marks that are
19 confusingly similar to the Amazon.com Marks, including without limitation the
20 <amazontan.com> domain name and the other Amazon Tan Names, or any other confusingly
21 similar names; (iii) using any word, term, name or device or any combination thereof that is
22 likely to cause confusion, mistake or deception as to the affiliation, connection or association
23 with Amazon.com of defendant, defendant's goods, services or commercial activities, or the
24 goods, services or commercial activities of any third party; (iv) using any word, term, name,
25 device or any combination thereof that is likely to cause confusion, mistake or deception as to
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1 the origin, sponsorship or approval by Amazon.com of defendant's goods, services or
2 commercial activities, or of the goods, services or commercial activities of any third party;
3 and (v) requiring defendant to take all steps necessary to direct the appropriate domain name
4 registrar to transfer to Amazon.com the <amazontan.com> domain name and any other
5 domain names that the Court determines infringe plaintiff's rights.

6 37. Amazon.com is further entitled to recover damages sustained in consequence
7 of defendant's wrongful conduct, in an amount to be determined; to recover defendant's
8 profits; and to recover its attorneys' fees and other costs herein. Based upon the
9 circumstances of the case, including the willful, deliberate and intentional nature of
10 defendant's conduct, including the extent of the unlawful conduct, Amazon.com is further
11 entitled, pursuant to 15 U.S.C. Section 1117, to recover triple the amount found as actual
12 damages.

13 VI. THIRD CLAIM FOR RELIEF

14 For Trademark Dilution, 15 U.S.C. §§ 1125(c) and 1127

15 38. Amazon.com specifically realleges and incorporates herein by reference each
16 and every allegation contained in paragraphs 1 through 37 hereof.

17 39. By virtue of Amazon.com's prominent, long and continuous use of the
18 AMAZON.COM® trademark in interstate commerce, it has become and continues to be
19 "famous" within the meaning of 15 U.S.C. Section 1125(c).

20 40. Defendant has made and continue to make use in interstate commerce of the
21 AMAZON.COM® trademark in a manner that causes dilution of the distinctive quality of
22 such mark, and lessens the capacity of such mark to identify and distinguish Amazon.com's
23 goods and services.

24 41. Amazon.com is entitled to an order from this Court temporarily restraining
25 and preliminarily and permanently enjoining defendant and his agent and employees, and
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1 others acting in concert with them, from directly or indirectly making any further commercial
2 use of the Amazon.com Marks or any other names, marks or logos that are substantially
3 similar thereto (including the <amazontan.com> domain name and the other Amazon Tan
4 Names, and requiring defendant to take all steps necessary to direct the appropriate domain
5 name registrar to transfer to Amazon.com the <amazontan.com> domain name and any other
6 domain names that the Court determines dilute the AMAZON.COM[®] trademark.

7 42. Because defendant has willfully intended to cause dilution of the
8 AMAZON.COM[®] trademark, Amazon.com is entitled, pursuant to 15 U.S.C. Sections 1117
9 and 1125(c)(2), to recover all damages sustained as a result of defendant's unlawful conduct,
10 including: (i) defendant's profits; (ii) Amazon.com's damages; (iii) Amazon.com's costs of
11 suit; and (iv) Amazon.com's reasonable attorneys' fees.

12 **VII. FOURTH CLAIM FOR RELIEF**

13 **Trademark Dilution**

14 **California Business and Professions Code § 14330, et seq.**

15 43. Amazon.com specifically realleges and incorporates herein by reference each
16 and every allegation contained in paragraphs 1 through 42, inclusive.

17 44. The acts and conduct of defendant as alleged above constitute trademark
18 dilution under California Business and Professions Code Section 14330 et seq.

19 45. Defendant's acts and conduct as alleged above have caused and will continue
20 to cause Amazon.com to suffer irreparable injury.

21 **VIII. FIFTH CLAIM FOR RELIEF**

22 **Trademark Infringement and Unfair Competition**

23 **California Business and Professions Code § 17200, et seq.**

24 46. Amazon.com specifically realleges and incorporates herein by this reference
25 each and every allegation contained in paragraphs 1 through 45, inclusive.

1 47. The acts and conduct of defendant, as alleged above, constitute trademark
2 infringement and unfair competition under California Business and Professions Code
3 §§ 17200, et seq., by reason of which Amazon.com has suffered, and will continue to suffer,
4 irreparable injury.

5 **IX. SIXTH CLAIM FOR RELIEF**

6 **Trademark Infringement and Unfair Competition Under Common Law**

7 48. Amazon.com specifically realleges and incorporates herein by reference each
8 and every allegation contained in paragraphs 1 through 47, inclusive.

9 49. Defendant's activities, as alleged above, constitute unfair methods of
10 competition, common law trademark infringement, misappropriation of Amazon.com's
11 goodwill in California and other states where defendant's goods and services are being
12 offered and/or advertised, including this district, and are a violation of the common law of
13 California.

14 50. As a result of defendant's deceptive acts and practices, and the resulting
15 consumer confusion, Amazon.com has suffered and will continue to suffer irreparable injury
16 to its business reputation and goodwill.

17 **X. SEVENTH CLAIM FOR RELIEF**

18 **Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125**

19 56. Amazon.com specifically realleges and incorporates herein by reference each
20 and every allegation contained in paragraphs 1 through 55 hereof.

21 57. By virtue of Amazon.com's prominent, long and continuous use of the
22 AMAZON.COM® trademark in interstate commerce, it has become and continues to be
23 "famous" within the meaning of 15 U.S.C. Section 1125(c).

24 58. Plaintiff is informed and believes and thereupon alleges that defendant
25 Kalaydjian registered, with a bad faith intent to profit from the Amazon.com trademark, the
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1 domain name <amazontan.com>, and that Kalaydjian uses, with a bad faith intent to profit
2 from the Amazon.com trademark, the domain name <amazontan.com>, as the address of the
3 Amazon.Tan.com Web site.

4 59. Defendant's choice of <amazontan.com> as a domain name was not based in
5 any way on defendant's legal name or any name that otherwise is commonly used to identify
6 defendant.

7 60. Defendant's domain name <amazontan.com> is confusingly similar to the
8 trademark of Amazon.com.

9 61. Defendant never made prior use of the <amazontan.com> domain name in
10 connection with a bona fide offering of any goods or services.

11 62. Defendant has made and continue to make use in commerce of the
12 AMAZON.COM[®] trademark in a manner that causes dilution of the distinctive quality of
13 such marks, and lessens the capacity of such marks to identify and distinguish Amazon.com's
14 goods and services.

15 63. The acts of defendant alleged herein are likely to cause confusion, or to cause
16 mistake, or to deceive as to the affiliation, connection, or association with Amazon.com or its
17 Web sites of defendant's goods, services or commercial activities. Defendant's actions
18 further misrepresent the nature, characteristics or qualities of defendant's goods, services or
19 commercial activities.

20 64. Amazon.com has no adequate remedy at law for the foregoing wrongful
21 conduct of defendant, in that: (i) defendant's actions damage and threaten to continue to
22 damage Amazon.com's unique and valuable property, injury to which cannot adequately be
23 compensated by monetary damages; (ii) the damages to Amazon.com from defendant's
24 wrongful actions are not precisely and fully ascertainable; (iii) the wrongful acts of defendant
25 injure and threaten to continue to injure Amazon.com's reputation and goodwill; and (iv) the
26

1 damages resulting to Amazon.com from defendant's wrongful conduct, and the conduct
2 itself, are continuing, and Amazon.com would be required to bring a multiplicity of suits to
3 achieve full compensation for the injuries caused thereby.

4 65. Unless restrained, the foregoing wrongful acts of defendant will continue to
5 cause irreparable injury to Amazon.com, both during the pendency of this action and
6 thereafter. Therefore, this Court should enter orders preliminarily and permanently enjoining
7 defendant and his agents, employees and others acting in concert with them from directly or
8 indirectly: (i) using or trafficking in the <amazontan.com> domain name; (ii) registering,
9 using or trafficking in Internet domain names that are dilutive of or confusingly similar to any
10 of the Amazon.com Marks; and (iii) requiring defendant to forfeit and to transfer to
11 Amazon.com the <amazontan.com> domain name and any and all other domain names that
12 the Court determines to be confusingly similar to or to dilute any of the Amazon.com Marks.

13 66. Amazon.com is further entitled to recover damages sustained in consequence
14 of defendant's wrongful conduct, in an amount to be determined; to recover defendant's
15 profits; and to recover its attorneys' fees and other costs herein. Based upon the
16 circumstances of the case, including the willful, deliberate and intentional nature of
17 defendant's conduct, including the extent of the unlawful conduct, Amazon.com is further
18 entitled, pursuant to 15 U.S.C. Section 1117(c), to recover statutory damages of \$100,000 per
19 domain name.

20 XI. PRAYER FOR RELIEF

21 WHEREFORE, Amazon.com prays for judgment as follows:

- 22 1. On each and every Claim for Relief alleged herein, for damages according to
23 proof;
- 24 2. On each and every Claim for Relief alleged herein, for preliminary and
25 permanent injunctive relief as hereinabove described;

3. On the First, Second, Third and Seventh Claims for Relief alleged herein, for attorneys' fees and enhanced or statutory damages as provided by law;

4. . For its costs of suit herein, including its reasonable attorneys' fees; and

5. For such other, further or different relief as this Court may deem just and proper.

DATED this 1st day of March, 2001.

JONES, DAY, REAVIS & POGUE

By

John C. Rawls (SBN 106567)
Sarah Silber (SBN 198594)

and

Of Counsel:

David Zapolsky, WSBA # 22451
Amazon.com, Inc.

1200 12th Avenue South, Suite 1200
Seattle, Washington 98144
(206) 266-1000

Attorneys for Plaintiff Amazon.com, Inc.

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff Amazon.com, Inc. hereby demands trial by jury of all issues so triable that are raised herein or which hereinafter may be raised in this action.

DATED this 1st day of March, 2001.

JONES, DAY, REAVIS & POGUE

By 

John C. Rawls (SBN 106567)

Sarah Silbert (SBN 198594)

and

Of Counsel:

David Zapolsky, WSBA # 22451

Amazon.com, Inc.

1200 12th Avenue South, Suite 1200

Seattle, Washington 98144

(206) 266-1000

Attorneys for Plaintiff Amazon.com, Inc.

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,078,494

United States Patent and Trademark Office

Registered July 15, 1997

**SERVICE MARK
PRINCIPAL REGISTER**

AMAZON.COM BOOKS

AMAZON.COM, INC. (WASHINGTON CORPORATION)
P.O. BOX 80387
SEATTLE, WA 981080387

FOR: COMPUTERIZED ON LINE ORDERING SERVICE FEATURING THE WHOLESALE AND RETAIL DISTRIBUTION OF BOOKS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-15-1995; IN COMMERCE 4-15-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BOOKS", APART FROM THE MARK AS SHOWN.

SER. NO. 75-008,352, FILED 10-23-1995.

ARI LEIFMAN, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,078,496

Registered July 15, 1997

**SERVICE MARK
PRINCIPAL REGISTER**

AMAZON.COM

AMAZON.COM, INC. (WASHINGTON CORPO-
RATION)
P.O. BOX 80387
SEATTLE, WA 981080387

AND RETAIL DISTRIBUTION OF BOOKS, IN
CLASS 42 (U.S. CLS. 100 AND 101).
FIRST USE 4-15-1995; IN COMMERCE
4-15-1995.

FOR: COMPUTERIZED ON LINE ORDER-
ING SERVICE FEATURING THE WHOLESALE

SER. NO. 75-008,413, FILED 10-23-1995.
ARI LEIFMAN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Corrected

Reg. No. 2,167,345

Registered June 23, 1998

OG Date Aug. 17, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

AMAZON.COM

AMAZON.COM, INC. (DELAWARE
CORPORATION)
P. O. BOX #0387
SEATTLE, WA 981080387

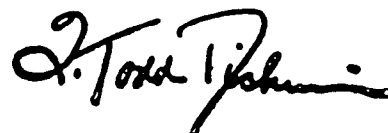
OWNER OF U.S. REG. NOS. 2,078,494
AND 2,078,496.

FOR: COMPUTERIZED ON LINE
SEARCH AND ORDERING SERVICE
FEATURING THE WHOLESALE AND
RETAIL DISTRIBUTION OF BOOKS,

MUSIC, MOTION PICTURES, MULTIME-
DIA PRODUCTS AND COMPUTER
SOFTWARE IN THE FORM OF PRINT-
ED BOOKS, AUDIOCASSETTES, VID-
EOCASSETTES, COMPACT DISKS,
FLOPPY DISKS, CD ROMS, AND
DIRECT DIGITAL TRANSMISSION, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).
FIRST USE 4-15-1995; IN COMMERCE
4-15-1995.

SER. NO. 75-277,670, FILED 4-18-1997.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 17, 1999.*



COMMISSIONER OF PATENTS AND TRADEMARKS

1 Michael R. Diliberto (SB#139029)
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3 2049 Century Park East, Suite 1080
4 Los Angeles, California 90067-3112
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6 Facsimile: (310) 557-1540

7 Attorneys for Defendant
8 VON ERIC LERNER KALAYDJIAN, d/b/a AMAZON COSMETICS AND TAN
9 PRODUCTS

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 AMAZON.COM, INC., a Delaware) Case No.: No. CV 01-02041 R
14 corporation,) (AIJx)
15)
16 Plaintiff,) VON ERIC LERNER KALAYDJIAN,
17) d/b/a AMAZON COSMETICS AND TAN
18 v.) PRODUCTS' ANSWER TO COMPLAINT;
19) AFFIRMATIVE DEFENSES
20 VON ERIC LERNER KALAYDJIAN)
21 d/b/a AMAZON COSMETICS AND TAN) DEMAND FOR JURY TRIAL
22 PRODUCTS,)
23)
24 Defendant.)
25)
26)
27)
28)

29 Defendant Von Eric Lerner Kalaydjian, dba Amazon Cosmetics
30 and Tan Products ("Kalaydjian") answers the complaint by
31 plaintiff Amazon.com, Inc. ("Plaintiff") as follows:

32 1. Answering paragraph 1 of the complaint, Kalaydjian
33 lacks knowledge or information sufficient to form a belief as to
34 the truth of the allegations concerning Plaintiff's alleged
35 trademark and on that ground denies such allegations in

1 paragraph 1 of the complaint, and otherwise denies all the other
2 allegations in paragraph 1 of the complaint.

3 **I. JURISDICTION AND VENUE**

4 2. Answering paragraph 2 of the complaint, Kalaydjian
5 admits that plaintiff alleges that this Court has jurisdiction
6 under 15 U.S.C. Section 1121 and 28 U.S.C. Sections 1121, 1331
7 and 1338(b), 15 U.S.C. Sections 1051, et seq., 15 U.S.C.
8 Sections 1125(c) and 1127, 15 U.S.C. Section 1125(d), 28 U.S.C.
9 Section 1332(a) and 28 U.S.C. Section 1367(a), but otherwise
10 denies all the other allegations of paragraph 2 of the
11 complaint.

12 3. Answering paragraph 3 of the complaint, Kalaydjian
13 admits that plaintiff alleges that venue is proper in this Court
14 pursuant to 28 U.S.C. Section 1391(b).

15 **II. THE PARTIES**

16 4. Kalaydjian lacks knowledge or information sufficient
17 to form a belief as to the truth of the allegations of paragraph
18 4 of the complaint and on that ground denies each and every
19 allegation in paragraph 4 of the complaint.

20 5. Answering paragraph 5 of the complaint, Kalaydjian
21 admits that he is a resident and citizen of the State of
22 California doing business as Amazon Cosmetics and Tan Products
23 in Los Angeles County, California and that Kalaydjian owns a Web
24 site on the Internet, but otherwise denies all the other
25 allegations of paragraph 5 of the complaint.

26 6. Kalaydjian denies the allegations of paragraph 6 of
27 the complaint.

1 III. FACTS GIVING RISE TO THIS ACTION

2 A. The Internet, Domain Names and Web sites

3 7. Kalaydjian lacks knowledge or information sufficient
4 to form a belief as to the truth of the allegations in paragraph
5 7 of the complaint and on that ground denies each and every
6 allegation in paragraph 7 of the complaint.

7 8. Kalaydjian lacks knowledge or information sufficient
8 to form a belief as to the truth of the allegations in paragraph
9 8 of the complaint and on that ground denies each and every
10 allegation in paragraph 8 of the complaint.

11 9. Kalaydjian lacks knowledge or information sufficient
12 to form a belief as to the truth of the allegations in paragraph
13 9 of the complaint and on that ground denies each and every
14 allegation in paragraph 9 of the complaint.

15 10. Kalaydjian lacks knowledge or information sufficient
16 to form a belief as to the truth of the allegations in paragraph
17 10 of the complaint and on that ground denies each and every
18 allegation in paragraph 10 of the complaint.

19 11. Kalaydjian lacks knowledge or information sufficient
20 to form a belief as to the truth of the allegations in paragraph
21 11 of the complaint and on that ground denies each and every
22 allegation in paragraph 11 of the complaint.

23 12. Kalaydjian lacks knowledge or information sufficient
24 to form a belief as to the truth of the allegations in paragraph
25 12 of the complaint and on that ground denies each and every
26 allegation in paragraph 12 of the complaint.

27 13. Kalaydjian lacks knowledge or information sufficient
28 to form a belief as to the truth of the allegations in paragraph

1 13 of the complaint and on that ground denies each and every.
2 allegation in paragraph 13 of the complaint.

3 14. Kalaydjian lacks knowledge or information sufficient
4 to form a belief as to the truth of the allegations in paragraph
5 14 of the complaint and on that ground denies each and every
6 allegation in paragraph 14 of the complaint.

7 **B. Amazon.com, Its Business and The Amazon.com Mark**

8 15. Kalaydjian lacks knowledge or information sufficient
9 to form a belief as to the truth of the allegations in paragraph
10 15 of the complaint and on that ground denies each and every
11 allegation in paragraph 15 of the complaint.

12 16. Kalaydjian lacks knowledge or information sufficient
13 to form a belief as to the truth of the allegations in paragraph
14 16 of the complaint and on that ground denies each and every
15 allegation in paragraph 16 of the complaint.

16 17. Kalaydjian lacks knowledge or information sufficient
17 to form a belief as to the truth of the allegations in paragraph
18 17 of the complaint and on that ground denies each and every
19 allegation in paragraph 17 of the complaint.

20 18. Kalaydjian lacks knowledge or information sufficient
21 to form a belief as to the truth of the allegations in paragraph
22 18 of the complaint and on that ground denies each and every
23 allegation in paragraph 18 of the complaint.

24 19. Kalaydjian lacks knowledge or information sufficient
25 to form a belief as to the truth of the allegations in paragraph
26 19 of the complaint and on that ground denies each and every
27 allegation in paragraph 19 of the complaint.

1 C. Defendant's Willful Efforts to Misappropriate the Goodwill
2 in the Amazon.com Marks

3 20. Kalaydjian denies the allegations of paragraph 20 of
4 the complaint.

5 D. The Confusion and Injury Caused by Defendant's Activities

6 21. Kalaydjian denies the allegations of paragraph 21 of
7 the complaint.

8 22. Kalaydjian denies the allegations of paragraph 22 of
9 the complaint.

10 23. Kalaydjian denies the allegations of paragraph 23 of
11 the complaint.

12 Amazon.com's Efforts to Stop Defendants' Infringement of its
13 Rights

14 24. Answering paragraph 24 of the complaint, Kalaydjian
15 admits that the parties sought to contact each other, but
16 otherwise denies all the other allegations in paragraph 24 of
17 the complaint.

18 25. Kalaydjian denies the allegations of paragraph 25 of
19 the complaint.

20 IV. FIRST CLAIM FOR RELIEF

21 (Trademark Infringement, 15 U.S.C. Section 1114(1))

22 26. Kalaydjian incorporates by reference his answers to
23 paragraphs 1-25, inclusive of the complaint.

24 27. Answering paragraph 27 of the complaint, Kalaydjian
25 admits that Exhibit 1 speaks for itself. Kalaydjian lacks
26 knowledge or information sufficient to form a belief as to the
27 truth of the other allegations in paragraph 27 of the complaint
28

1 and on that ground denies each and every other allegation in
2 paragraph 27 of the complaint.

3 28. Kalaydjian lacks knowledge or information sufficient
4 to form a belief as to the truth of the allegations in paragraph
5 28 of the complaint and on that ground denies each and every
6 allegation in paragraph 28 of the complaint.

7 29. Kalaydjian denies the allegations of paragraph 29 of
8 the complaint.

9 30. Kalaydjian denies the allegations of paragraph 30 of
10 the complaint.

11 31. Kalaydjian denies the allegations of paragraph 31 of
12 the complaint.

13 32. Kalaydjian denies the allegations of paragraph 32 of
14 the complaint.

15 **V. SECOND CLAIM FOR RELIEF**

16 (Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a))

17 33. Kalaydjian incorporates by reference his answers to
18 paragraphs 1-32, inclusive, of the complaint.

19 34. Kalaydjian denies the allegations of paragraph 34 of
20 the complaint.

21 35. Kalaydjian denies the allegations of paragraph 35 of
22 the complaint.

23 36. Kalaydjian denies the allegations of paragraph 36 of
24 the complaint.

25 37. Kalaydjian denies the allegations of paragraph 37 of
26 the complaint.

1 VI. THIRD CLAIM FOR RELIEF

2 (For Trademark Dilution, 15 U.S.C. Section 1125(c) and 1127)

3 38. Kalaydjian incorporates by reference his answers to
4 paragraphs 1-37, inclusive, of the complaint.

5 39. Kalaydjian lacks knowledge or information sufficient
6 to form a belief as to the truth of the allegations in paragraph
7 39 of the complaint and on that ground denies each and every
8 allegation in paragraph 39 of the complaint.

9 40. Kalaydjian denies the allegations of paragraph 40 of
10 the complaint.

11 41. Kalaydjian denies the allegations of paragraph 41 of
12 the complaint.

13 42. Kalaydjian denies the allegations of paragraph 42 of
14 the complaint.

15 VII. FOURTH CLAIM FOR RELIEF

16 (Trademark Dilution

17 (California Business and Professions Code Section 14330, et
18 seq.)

19 43. Kalaydjian incorporates by reference his answers to
20 paragraphs 1-42, inclusive, of the complaint.

21 44. Kalaydjian denies the allegations of paragraph 44 of
22 the complaint.

23 45. Kalaydjian denies the allegations of paragraph 45 of
24 the complaint.

1 VIII. FIFTH CLAIM FOR RELIEF

2 (Trademark Infringement and Unfair Competition

3 (California Business and Professions Code Section 17200, et
4 seq.)

5 46. Kalaydjian incorporates by reference his answers to
6 paragraphs 1-45, inclusive, of the complaint.

7 47. Kalaydjian denies the allegations of paragraph 47 of
8 the complaint.

9 IX. SIXTH CLAIM FOR RELIEF

10 (Trademark Infringement and Unfair Competition Under Common law)

11 48. Kalaydjian incorporates by reference his answers to
12 paragraphs 1-47, inclusive, of the complaint.

13 49. Kalaydjian denies the allegations of paragraph 49 of
14 the complaint.

15 50. Kalaydjian denies the allegations of paragraph 50 of
16 the complaint.

17 X. SEVENTH CLAIM FOR RELIEF

18 (Anticybersquatting Consumer Protection Act, 15 U.S.C. Section
19 1125)

20 56. Kalaydjian incorporates by reference his answers to
21 paragraphs 1-50, inclusive, of the complaint.

22 57. Kalaydjian lacks knowledge or information sufficient
23 to form a belief as to the truth of the allegations in paragraph
24 57 of the complaint and on that ground denies each and every
25 allegation in paragraph 57 of the complaint.

26 58. Kalaydjian denies the allegations of paragraph 58 of
27 the complaint.
28

1 59. Kalaydjian denies the allegations of paragraph 59 of
2 the complaint.

3 60. Kalaydjian denies the allegations of paragraph 60 of
4 the complaint.

5 61. Kalaydjian denies the allegations of paragraph 61 of
6 the complaint.

7 62. Kalaydjian denies the allegations of paragraph 62 of
8 the complaint.

9 63. Kalaydjian denies the allegations of paragraph 63 of
10 the complaint.

11 64. Kalaydjian denies the allegations of paragraph 64 of
12 the complaint.

13 65. Kalaydjian denies the allegations of paragraph 65 of
14 the complaint.

15 66. Kalaydjian denies the allegations of paragraph 66 of
16 the complaint.

17 **First Affirmative Defense:**

18 67. Plaintiff's complaint and each and every allegation
19 contained therein fails to state a claim upon which any relief
20 may be granted against Kalaydjian.

21 **Second Affirmative Defense:**

22 68. Plaintiff's complaint and each and every claim for
23 relief contained therein is barred by the doctrine of unclean
24 hands.

25 **Third Affirmative Defense:**

26 69. Plaintiff's complaint and each and every claim for
27 relief contained therein is barred by the doctrine of estoppel.

1 **Fourth Affirmative Defense:**

2 70. Plaintiff, by its acts or omissions, has waived some
3 or all of the purported claims for relief set forth in
4 Plaintiff's complaint.

5 **Fifth Affirmative Defense:**

6 71. Plaintiff, by its acts or omissions, is precluded by
7 consent from asserting some or all of the purported claims for
8 relief set forth in Plaintiff's complaint.

9 **Sixth Affirmative Defense:**

10 72. Plaintiff, by its acts or omissions is precluded by
11 acquiescence from asserting some or all of the purported claims
12 for relief set forth in Plaintiff's complaint.

13 **Seventh Affirmative Defense:**

14 73. Plaintiff's complaint and each and every claim for
15 relief contained therein is barred by the doctrine of laches.

16 **Eighth Affirmative Defense:**

17 74. Plaintiff would be unjustly enriched if it recovered
18 any damages alleged to have been suffered, as Plaintiff can show
19 no loss.

20 **Ninth Affirmative Defense:**

21 75. Kalaydjian's actions were at all times taken in the
22 good faith exercise of Kalaydjian's reasonable business judgment
23 and were taken for valid business purposes. In addition,
24 Kalaydjian's actions with respect to the events alleged in
25 Plaintiff's complaint were made in good faith.

1 **Tenth Affirmative Defense:**

2 76. Kalaydjian is informed and believes and thereon
3 alleges that Plaintiff failed to take any reasonable steps to
4 mitigate its purported damages.

5 **Eleventh Affirmative Defense:**

6 77. The conduct of Kalaydjian was justified or privileged
7 under the circumstances.

8 **Twelfth Affirmative Defense:**

9 78. The complaint and each and every claim for relief
10 contained therein fails to state sufficient facts to support the
11 recovery of attorneys' fees, costs, or enhanced, punitive, or
12 statutory damages.

13 **Thirteenth Affirmative Defense:**

14 79. The complaint and each and every claim for relief
15 contained therein fails to state sufficient facts to establish
16 that this is an exceptional case under 15 U.S.C. §1117.

17 **Fourteenth Affirmative Defense:**

18 80. Without admitting that Plaintiff owns or has ever
19 owned any valid or enforceable alleged trademark, Plaintiff
20 and/or its predecessors-in-interest failed to comply with the
21 statutory formalities of the Patent and Trademark laws of the
22 United States, and, as a result, Plaintiff's alleged trademark
23 was injected into the public domain.

24 **Fifteenth Affirmative Defense:**

25 81. Without admitting that Plaintiff owns or has ever
26 owned any valid or enforceable alleged trademark, and without
27 admitting that Kalaydjian has used the alleged trademark or any
28

1 portion thereof, any and all of the alleged uses of Plaintiff's
2 alleged trademark were de minimis and therefore non-actionable.

3 Sixteenth Affirmative Defense:

4 82. Without admitting that Plaintiff owns or has ever
5 owned any valid or enforceable trademark, Kalaydjian's
6 trademarks and names which Kalaydjian is informed and believes
7 that Plaintiff contends are similar to Plaintiff's alleged
8 trademark were independently created.

9 Seventeenth Affirmative Defense:

10 83. Plaintiff's purported trademark is not inherently
11 distinctive.

12 Eighteenth Affirmative Defense:

13 84. Plaintiff's purported trademark lacks secondary
14 meaning and/or acquired distinctiveness.

15 Nineteenth Affirmative Defense:

16 85. The complaint and each and every claim for relief
17 contained therein is barred by the applicable statutes of
18 limitation.

19 Twentieth Affirmative Defense:

20 86. Without admitting that Plaintiff owned or has ever
21 owned any valid or enforceable trademark, Kalaydjian is informed
22 and believes and on that basis alleges that Plaintiff is not the
23 owner of the purported trademark. Plaintiff's purported
24 trademark, individually and in combination, was used by third
25 parties prior to the usage by Plaintiff.

26 Twenty-First Affirmative Defense:

27 87. The appearance, sound, sight, meaning and connotation
28 of Kalaydjian's trademarks and names are significantly different

1 and/or distinguishable from Plaintiff's alleged trademark in the
2 marketplace, thereby eliminating any likelihood of confusion
3 which could arise as a result of any alleged similarities
4 between Kalaydjian's trademarks and names and Plaintiff's
5 alleged trademark.

6 **Twenty-Second Affirmative Defense:**

7 88. The complaint and each and every claim for relief
8 contained therein is barred by the doctrine of fair use.

9 **Twenty-Third Affirmative Defense:**

10 89. The complaint and each and every claim for relief
11 contained therein is barred because there is no likelihood of
12 confusion between Kalaydjian's trademarks and names and
13 plaintiff's alleged trademark.

14 **Twenty-Fourth Affirmative Defense**

15 90. Kalaydjian's use of his trademarks and names for his
16 goods and services was prior to Plaintiff's alleged use of its
17 alleged trademark for any same or similar goods or services.

18 **Twenty-Fifth Affirmative Defense**

19 91. The goods and services sold under Kalaydjian's
20 trademarks and names, and the consumers to whom such goods and
21 services are offered, are different from the goods and services
22 offered by the Plaintiff under Plaintiff's alleged mark and the
23 consumers to whom Plaintiff offers its goods and services. In
24 addition, Kalaydjian does not even compete with the Plaintiff in
25 the marketplace.

26 **Twenty-Sixth Affirmative Defense**

27 92. Without admitting that Plaintiff owned or has ever
28 owned any valid or enforceable trademark, Kalaydjian is informed

1 and believes and on that basis alleges that Plaintiff's alleged
2 trademark rights are unenforceable for lack of quality control.

3 Twenty-Seventh Affirmative Defense

4 93. Plaintiff is not entitled to any claim for relief
5 sought in Plaintiff's complaint, because any alleged injury or
6 damages suffered by Plaintiff occurred as a result of the
7 conduct of Plaintiff and/or its agents.

8 Twenty-Eighth Affirmative Defense

9 94. There is no likelihood of confusion between
10 Kalaydjian's trademarks and names and Plaintiff's alleged
11 trademark due to the widespread third-party use of
12 tradenames/marks containing the term "Amazon."

13 WHEREFORE, Kalaydjian prays for judgment in his favor and
14 against Plaintiff and prays that this court:

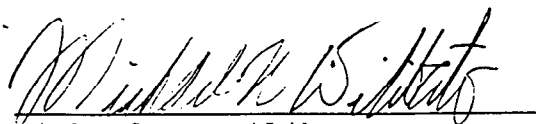
- 15 1. Order that Plaintiff recover nothing on its complaint;
16 2. Order that Plaintiff's complaint be dismissed;
17 3. Award Kalaydjian his attorneys' fees and costs
18 incurred; and
19 4. Award Kalaydjian such other relief as the Court deems
20 just and proper.
21

22 Respectfully submitted,

23 KLEINBERG & LERNER, LLP

24
25 DATED: March 28, 2001

26 By:


27 Michael R. Diliberto
28 Attorneys for Defendant
VON ERIC LERNER KALAYDJIAN,
d/b/a AMAZON COSMETICS AND
TAN PRODUCTS

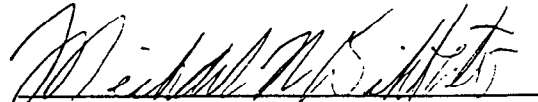
1 DEMAND FOR JURY TRIAL

2 Kalaydjian demands that his claims be tried to a jury
3 pursuant to the Seventh Amendment to the United States
4 Constitution, Fed.R.Civ.P. Rule 38(b) and Local Rule 3.4.10.1.

5
6 KLEINBERG & LERNER, LLP

7
8 DATED: March 28, 2001

9 By:


Michael R. Diliberto
Attorneys for Defendant
VON ERIC LERNER KALAYDJIAN,
d/b/a AMAZON COSMETICS AND
TAN PRODUCTS

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On March 28, 2001, I served a copy of the foregoing document described as:

on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

John C. Rawls
Sarah Silbert
JONES, DAY, REAVIS & POGUE
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013-1025


XX (BY MAIL) I caused such envelope with postage thereon fully paid to be placed in the United States mail at Los Angeles, California.

XX (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the business' practice for the collection of and processing of correspondence for mailing with the United States Post Office Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced document was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 28, 2001, in Los Angeles, California.

LOS Angeles, California.



Cheryl Smith

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 Alan H. Fairley (SBN # 181068)
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 Facsimile: (206) 266-7010

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 9 AMAZON.COM, INC.

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 13 Facsimile: (310) 557-1540

14 Attorneys for Defendant
 15 VON ERIC LERNER KALAYDJIAN,
 d/b/a AMAZON COSMETICS AND
 TAN PRODUCTS

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

16 AMAZON.COM, INC., a Delaware
 17 corporation,

21 Plaintiff,

22 v.

23 VON ERIC LERNER KALAYDJIAN, an
 24 individual, and AMAZON COSMETICS
 AND TAN PRODUCTS, an entity of
 25 unknown form,

26 Defendants. ☒ Docketed

☒ Copies NTC Sent

☒ JS - 5 / JS - 6

☒ JS - 2 / JS - 3

☒ CLSD

LA-1126522v1
 039323 - 600005

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☐ JS-2/JS-3

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NO. CV 01-02041 R (AIJx)

STIPULATION AND REQUEST FOR
 DISMISSAL WITH PREJUDICE; ORDER
 THEREON

[Fed. R. Civ. P. 41(a)(2)]

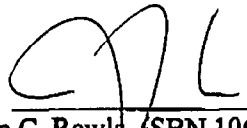
ENTERED ON ICMS
 APR 22 2002
 CV *[Signature]*

78

1 IT IS HEREBY STIPULATED by and between Plaintiff Amazon.com, Inc.
2 ("Amazon.com") and Defendant Von Eric Lerner Kalaydjian d/b/a Amazon Cosmetics and Tan
3 Products ("Kalaydjian"), through their designated counsel, and the Court respectfully is
4 requested to order, that Amazon.com's action against Kalaydjian be dismissed with prejudice
5 pursuant to Fed. R. Civ. P. 41(a)(2), each side to bear its or his own fees and costs.

6
7 DATED: January __, 2002

JONES DAY REAVIS & POGUE

8
9 By: 
10 John C. Rawls (SBN 106567)
11 Alan H. Fairley (SBN 181069)

12 Of Counsel:
13 David Zapolsky, WSBA #22451
14 Amazon.com, Inc.
15 1200 12th Avenue South, Suite 1200
16 Seattle, Washington 98144

17 Attorneys for Plaintiff
18 AMAZON.COM, INC.

KLEINBERG & LERNER, LLP

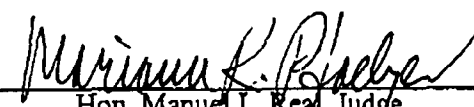
19 DATED: *March 29* January __, 2002

20 By: 
21 Michael R. Diliberto

22 Attorneys for Defendant
23 VON ERIC LERNER KALAYDJIAN,
24 d/b/a AMAZON COSMETICS AND TAN
25 PRODUCTS

26 IT IS SO ORDERED.

27 Dated: *April 17, 2002*

28 
Hon. Manuel L. Real, Judge
United States District Court
for

